of a third party. *Publishers* v. *Wilks*, 105 Ark. 243, 151 S. W. 280; *Martin* v. *Campbell*, 120 Mass. 126. *Cf. Root* v. *Bancroft*, 8 Gray (Mass.), 619. But misconduct of the plaintiff may cause denial of specific performance where rescission would not be allowed. *Kelly* v. *Central Pacific R. Co.*, 74 Cal. 557, 16 Pac. 386; *Allen* v. *Kirk*, 219 Pa. St. 574, 69 Atl. 50. The mistake of the defendant here was not, however, induced by the plaintiff. The cases of unilateral mistake coupled with hardship upon the defendant show that specific performance may be denied where the plaintiff's only moral obliquity arises after the contract and consists in then ignoring the appeal of the defendant's situation. See 3 WILLISTON, CONTRACTS, §§ 1425, 1427. But the terms of the contract in the principal case were not sufficiently harsh to be within the rule of these cases. *Day* v. *Wells*, 30 Beav. 220. If right, therefore, the case must rest on some additional ground. It may be significant that the plaintiff is seeking to take advantage of a tort. *Cf. Dixon* v. *Olmius*, 1 Cox Eq. 414; *Luttrell* v. *Olmius*, 11 Ves. Jr. 638 (*cit.*). But see *Dye* v. *Parker*, 194 Pac. 640, 195 Pac. 599 (Kans.). The defendant's mistake would be impaired as a defense if caused by his own negligence. *Tamplin* v. *James*, 15 Ch. D. 215. The probability that it was so caused is diminished by the fraud as the moving cause. Also a shade is cast upon the plaintiff's morality, and the weight of both these elements may just turn the balance of discretion, but certainly with no great preponderance.

EVIDENCE — PRIVILEGED COMMUNICATIONS — STATEMENTS TO A PROSECUTING ATTORNEY. — The defendant was convicted of statutory rape. At the trial, for the purpose of impeaching the testimony of the prosecuting witness, he offered in evidence her statements to the county attorney to the effect that the defendant had not assaulted her. This evidence was excluded. *Held*, that the exclusion was erroneous. *entoamore* v. *State*, 181 N. W. 182 (Neb.).

The basis of privilege is confidence. See 4 WIGMORE, EVIDENCE, § 2285. There is a social interest that clients receive confidential advice from their attorneys without the menace of revelation upon the stand. See 1 TAYLOR, EVIDENCE, 11 ed., § 911. See Brougham, L. C., in *Greenough* v. *Gaskell*, 1 Myl. & K. 98, 103. There is a social interest in an administration of criminal law unembarrassed by the possibility that citizens, who pursuant to duty and in good faith inform the prosecuting attorney of crime, will be held liable for their accusations. *Gabriel* v. *McMullin*, 127 Ia. 426, 103 N. W. 355; *Vogel* v. *Gruaz*, 110 U. S. 311. See 4 WIGMORE, EVIDENCE, § 2374; NEWELL, SLANDER AND LIBEL, 3 ed., §§ 596–597. In both cases, to foster confidence, public policy raises the shield of privilege. But in neither case is the privilege indefeasible. The communications of a client seeking advice for a fraudulent purpose may be exposed in court. See HEGEMAN, PRIVILEGED COMMUNICATIONS, §§ 77–81; 1 TAYLOR, EVIDENCE, 11 ed., § 912. Information given by a citizen to a prosecuting officer in furtherance of a conspiracy to commit an indictable offence is subject to disclosure. *State* v. *Wilcox*, 90 Kan. 80, 132 Pac. 982. A balance of interests determines the decision of such cases. Lord Esher well said that when two public policies conflict, the one which says that the innocent man shall not be condemned when his innocence can be proved must prevail. See *Marks* v. *Beyfus*, 25 Q. B. D. 494, 498. In the principal case the evidence excluded was material to the proof of innocence. In such instance — especially where no liability devolves upon the informant by admitting the evidence — the privilege must give way. See *Riggins* v. *State*, 125 Md. 165, 93 Atl. 437, *accord*.

EVIDENCE — *RES GESTA* — STATEMENTS OF BYSTANDER. — In a trial for murder, the defendant pleaded self-defense. A witness for the defendant testi-